

CAYMAN ISLANDS



**PROCEEDS OF CRIME (AMENDMENT)
BILL, 2023**

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A BILL FOR AN ACT TO AMEND THE PROCEEDS OF CRIME ACT (2020 REVISION) IN ORDER TO REFORM THAT ACT IN THE AREAS OF INTELLIGENCE GATHERING AND INVESTIGATIONS; TO ENSURE THAT THE ACT CONFORMS TO INTERNATIONAL BEST PRACTICES; TO CLARIFY THE EVIDENTIAL BASIS ON WHICH IT MAY BE SHOWN THAT PROPERTY IS CRIMINAL PROPERTY OR IS OBTAINED THROUGH UNLAWFUL CONDUCT; TO AMEND THE ACT IN ORDER TO PROTECT SELF-REGULATORY BODIES WHICH ARE SUPERVISORY AUTHORITIES FROM CERTAIN LIABILITY IN THE EXECUTION OF THEIR REGULATORY DUTIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Portfolio of Legal Affairs (PLA)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Proceeds of Crime Act (2020 Revision) (“the principal Act”) in order to —

- (a) reform the principal Act in the areas of intelligence gathering and sharing, and investigations;
- (b) provide protection for self-regulatory bodies against liability;
- (c) ensure that the principal Act conforms to international best practices;
- (d) modernise the conduct of prosecutions, which includes clarifying the evidential basis on which it may be shown that property is criminal property or is obtained through unlawful conduct; and
- (e) provide for incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 makes a miscellaneous amendment to the drafting style of the legislation.

Clause 3 amends the section heading of section 2 of the principal Act to bring it in line with the drafting style of the legislation in the Islands.

Clause 3 also amends section 2 of the principal Act in order to —

- (a) provide definitions for “appropriate officer”, “designated non-financial business and profession”, and “self-regulatory body”;
- (b) delete the definitions of “property investment” and “single family office”; and
- (c) amend the definition of “virtual asset”.

Clause 4 repeals section 2A of the principal Act which provides for the meaning of “single family”.

Clause 5 amends section 4(2) of the principal Act to provide that the Financial Reporting Authority may disseminate, in its discretion or upon request, information and results of any analysis to any competent authority, to any Supervisory Authority within the Islands and to such other institutions or persons in the Islands as may be designated in writing by the Steering Group and shall use dedicated, secure and protected channels for such dissemination.

Clause 6 amends section 9 of the principal Act to provide that persons are also protected when they make disclosures of suspected offences, not just offences. Clause 5 also clarifies that the nominating office referred to in clause 9 is not an officer of the Financial Reporting Authority.

Clause 7 provides a new Part 2A which provides for the immunity of self-regulatory bodies, and their employees and agents when carrying out their regulatory functions. A proposed



new section 14A provides that notwithstanding the provisions of any other Act, while carrying out a regulatory function under the legislation, a self-regulatory body which is a Supervisory Authority, and its manager, officers, employees and agents, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective regulatory functions unless it is shown that the act or omission was in bad faith or constituted wilful misconduct.

Clause 8 amends section 79 of the principal Act in order to clarify the legal position on property obtained through unlawful conduct. Thus, it will be provided that in deciding whether any property was obtained through unlawful conduct it is not necessary to show that the conduct was of a particular kind if it is shown, *inter alia*, that —

- (a) the property was obtained through conduct of a specific kind or kinds, and that conduct of that kind or those kinds is unlawful conduct; or
- (b) the circumstances in which the property was handled are such as to give rise to the irresistible inference that it can only be derived from unlawful conduct.

Clause 9 amends section 82 of the principal Act to align subsection (4) of that section more closely with the provisions of the U.K. Proceeds of Crime Act, 2002.

Clause 10 amends section 110 of the principal Act to provide for a minimum realizable amount of money before a search can take place or a restraint ordered. No minimum amount is currently defined or prescribed. It is provided in the amendment to section 110 that it will be defined as one thousand Cayman Islands dollars.

Clauses 11, 12 and 13 respectively amend sections 133, 134 and 135 of the principal Act. The sections deal with related matters. Sections 133, 134 and 135 of the principal Act create various money laundering offences, including concealing, arranging and possession of criminal property. All three sections contain a defence relating to the filing of a suspicious activity report. The defence in section 134 is worded slightly differently from that in sections 133 and 135.

In sections 133 and 135, the defence of having filed a suspicious activity report does not apply to the person who committed, or was a party to, the offence from which the property derives. As such, these sections do not have the same negative connotations as section 134. However, it is important to note that these defences exist in the UK because of the consent regime in that jurisdiction, whereby a person submitting a suspicious activity report may obtain consent for a particular conduct from the financial intelligence unit. It was advised that due to the absence of a consent regime in the Islands, the purpose of these defences in the sections are unclear. It is therefore provided respectively in clauses 11, 12 and 13 that paragraphs (a) and (b) be deleted from sections 133(2), 134(2) and 135(2) of the principal Act.

Clause 14 amends section 138(1)(b) of the principal Act to bring the language in line with the amendment to section 4(2)(ca) of the principal Act as provided in clause 4.

Clause 15 amends section 144 of the principal Act by repealing and replacing subsection (5A) of section 144. This amendment is required in order to clarify how property may be



proved to be criminal property and to bring this part of the legislation in line with relevant UK legal authorities.

Clause 16 amends section 196 of the principal Act. Section 196 deals with extradition. As currently drafted, it does not include a reference to Orders in Council made under the U.K. Extradition Act 2003. In light of the application of the Extradition Act 2003 (Overseas Territories) Order 2016 to the Islands, a reference in section 196 to Orders in Council made under that Act is now included.

Clause 17 amends Schedule 5 of the principal Act to correct minor errors.

Clause 18 amends Schedule 6 of the principal Act by repealing paragraphs 14B and 22 in order to provide that undertaking property investment without using a real estate agent or broker and operating a single family office do not fall within the definition of “relevant financial business”.

Clause 19 contains transitional provisions.

CAYMAN ISLANDS



**PROCEEDS OF CRIME (AMENDMENT) BILL,
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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2023.

Amendment of the Proceeds of Crime Act (2020 Revision) - references to Parts

2. *The Proceeds of Crime Act (2020 Revision)*, in this Act referred to as the “principal Act”, is amended as follows —
 - (a) by deleting the following words —
 - (i) Part I;



- (ii) Part II;
 - (iii) Part III;
 - (iv) Part IV;
 - (v) Part V;
 - (vi) Part VI;
 - (vii) Part VII;
 - (viii) Part VIII;
 - (ix) Part IX; and
- (b) substituting the following words for those in paragraph (a) —
- (i) Part 1;
 - (ii) Part 2;
 - (iii) Part 3;
 - (iv) Part 4;
 - (v) Part 5;
 - (vi) Part 6;
 - (vii) Part 7;
 - (viii) Part 8; and
 - (ix) Part 9.

Amendment of section 2 - definitions and interpretation

3. The principal Act is amended in section 2 as follows —

- (a) in the section heading, by deleting the words “Definitions and”;
- (b) by inserting, in the appropriate alphabetical sequence, the following definitions —
 - “**appropriate officer**” means —
 - (a) a constable; or
 - (b) any other person so designated by the Cabinet by Order for the purposes of this Act; and
 - “**designated non-financial business and profession**” means a natural or legal person designated as such in accordance with regulations made under this Act; and
 - “**self-regulatory body**” means a body designated under this Act and regulations made under this Act as a Supervisory Authority for a designated non-financial business and profession;”;
- (c) by deleting the definitions of “**property investment**” and “**single family office**”; and



- (d) in the definition of “**virtual asset**”, by inserting after the word “purposes” the words “but does not include any digital representation of fiat currencies”.

Repeal of section 2A - meaning of “single family”

4. The principal Act is amended by repealing section 2A.

Amendment of section 4 - powers, functions and duties of Financial Reporting Authority

5. The principal Act is amended in section 4(2) by repealing paragraph (ca) and substituting the following paragraph —

“(ca) may disseminate, in its discretion or upon request, information and results of any analysis to —

- (i) any competent authority;
- (ii) any Supervisory Authority within the Islands, and
- (iii) such other institutions or persons in the Islands as may be designated in writing by the Steering Group,

and shall use dedicated, secure and protected channels for such dissemination;”.

Amendment of section 9 - protection upon disclosure of information to Financial Reporting Authority

6. The principal Act is amended in section 9 by repealing subsection (1) and substituting the following subsection —

“(1) Without prejudice to any other provision of this Act, where a person discloses to a nominated officer or the Financial Reporting Authority information concerning —

- (a) the proceeds or suspected proceeds of criminal conduct;
- (b) money laundering or suspected money laundering;
- (c) terrorism or suspected terrorism;
- (d) the financing of terrorism or suspected financing of terrorism;
or
- (e) the financing of proliferation or suspected financing of proliferation,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and the fact of such disclosure shall not give rise to any criminal or civil liability.”.

Insertion of Part 2A - immunity of self-regulatory bodies appointed as Supervisory Authorities

7. The principal Act is amended by inserting after Part 2 the following Part —

“Part 2A - Immunity of self-regulatory bodies appointed as Supervisory Authorities

Immunity of a self-regulatory body which is a Supervisory Authority

14A. Notwithstanding the provisions of any other Act, while carrying out a regulatory function under this Act, a self-regulatory body which is a Supervisory Authority, and its managers, officers, employees and agents, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective regulatory functions unless it is shown that the act or omission was in bad faith or constituted wilful misconduct.”.

Amendment of section 79 - property obtained through unlawful conduct

8. The principal Act is amended in section 79(2) by repealing paragraph (b) and substituting the following paragraph —

- “(b) it is not necessary to show that the conduct was of a particular kind if it is shown that —
- (i) the property was obtained through conduct of a specific kind or kinds, and that conduct of that kind or those kinds is unlawful conduct; or
 - (ii) the circumstances in which the property was handled are such as to give rise to the irresistible inference that it can only be derived from unlawful conduct.”.

Amendment of section 82 - application for property freezing order

9. The principal Act is amended in section 82 by repealing subsection (4) and substituting the following subsection —

- “(4) The court may make a property freezing order on an application if it is satisfied that the condition in paragraph (a) is met and, where applicable, that the condition in paragraph (b) is met, that is to say —
- (a) the first condition is that there is a good arguable case —
 - (i) that the property to which the application for the order relates is or includes recoverable property; and



- (ii) that, if any of it is not recoverable property, it is associated property; and
- (b) the second condition is that if —
 - (i) the property to which the application for the order relates includes property alleged to be associated property; and
 - (ii) the Director of Public Prosecutions has not established the identity of the person who holds it,
 the Director of Public Prosecutions has taken all reasonable steps to do so.”.

Amendment of section 110 - searches

10. The principal Act is amended in section 110 as follows —

- (a) by repealing subsection (5) and substituting the following subsection —

“(5) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash.”; and
- (b) by inserting after subsection (7) the following subsection —

“(7A) For the purposes of this section and Schedule 5 the words “**minimum amount**” means one thousand Cayman Islands dollars.”.

Amendment of section 133 - concealing, etc.

11. The principal Act is amended in section 133(2) by repealing paragraphs (a) and (b).

Amendment of section 134 - arrangements

12. The principal Act is amended in section 134(2) by repealing paragraphs (a) and (b).

Amendment of section 135 - acquisition, use and possession

13. The principal Act is amended in section 135(2) by repealing paragraphs (a) and (b).

Amendment of section 138 - disclosure by the Financial Reporting Authority

14. The principal Act is amended in section 138(1) by repealing paragraph (b) and substituting the following paragraph —

- “(b) may, where it has cause to suspect that criminal conduct has been committed, disclose any information received under this Act to —
 - (i) any competent authority;
 - (ii) any Supervisory Authority within the Islands; and
 - (iii) such other institutions or persons in the Islands as may be designated in writing by the Steering Group; and”.

Amendment of section 144 - interpretation

15. The principal Act is amended in section 144 by repealing subsection (5A) and substituting the following subsection —

“(5A) It may be proved that property is criminal property —

- (a) by showing that it derives from conduct of a specific kind or kinds, and that conduct of that kind or those kinds is criminal conduct; or
- (b) by showing that the circumstances in which the property was handled are such as to give rise to the irresistible inference that it can only be criminal property.”.

Amendment of section 196 - extradition where Schedule 1 to the Extradition Act 2003 applies

16. The principal Act is amended in section 196 by deleting the words “The offences to which the *Extradition Act (Overseas Territories) Order 2016 [UKSI 2016/990]* under sections 177, 178 and 244(2)” and substituting the words “The offences to which the *Extradition Act (Overseas Territories) Order 2016 (UKSI 2016/990)* and any other Order in Council made under sections 177, 178 and 224(2)”.

Amendment of Schedule 5 - modifications to the Act when applied to external confiscation orders and related proceedings

17. The principal Act is amended in Schedule 5 as follows —

- (a) in paragraph 6 as follows —
 - (i) in subparagraph (3)(a), by deleting the words “subparagraph (5)” and substituting the words “subparagraph (4)”; and
 - (ii) in subparagraph (10), by deleting the words “subparagraph (10)” and substituting the words “subparagraph (9)”; and
- (b) in paragraph 7, by deleting the words “paragraph 6(5)” and substituting the words “paragraph 6(4)”.

Amendment of Schedule 6 - activities falling within the definition of “relevant financial business”

18. The principal Act is amended in Schedule 6 by repealing paragraphs 14B and 22.



Transitional provisions

- 19.** All proceedings pending at the date of the commencement of this amending Act in respect of offences committed or alleged to have been committed against the principal Act and to which any of the provisions in sections 8, 9, 11, 12, 13 and 15 of this amending Act apply, shall be continued and dealt with under this amending Act.

Passed by the Parliament the day of 2023.

Speaker

Clerk of the Parliament

